Supreme Court, U.S.
FILED

96 765 AUG 30 1996

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No.

In the
Supreme Court of the United States

October Term, 1996

In Re; Richard Alan Kallevig,

Petitioner,

v.

The United States
INTERNAL REVENUE SERVICE

On Petition For Writ of Certiorari
To The Eighth Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

Richard A. Kallevig
Citizen in Party
5825 Division Street
Excelsior, Minnesota
55331
Ph (612) 470-5371

38 pp

Question

1. Did the bankruptcy court by exercise and abuse of discretion violate debtor's substantial right to due process and equal protection of law?

Parties to Proceeding

Richard Alan Kallevig, Petitioner,
Citizen of the State of Minnesota
appearing as Citizen in Party,
POA: 5825 Division Street,
Shorewood, Minnesota, 55331.
Phone: (612) 470~5371

Lorretta C. Argrett, Assistant Attorney General
Tax Division; and Gary R. Allen, Chief, Appellate
Section, Department of Justice, PO BOX 502,
Washington DC 20044, appearing on behalf of:
The United States INTERNAL REVENUE SERVICE.
Phone: (202) 514~3361

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CITATIONS AND AUTHORITIES

U.S. v. Mobil Oil Corp., 82-1 USTC § 9242 at 83,506, 543 F.Supp. 507, 513 (12/18/81)

United States v. United States District Court, 407 U.S. 297, 313 - 318, 92 S.Ct. 2125, 2134 - 2137, 32 L.Ed.2d 752

Statement of Jurisdiction

Comes now Richard Alan Kallevig, Petitioner/ Citizen in Party, a 43 year old male private Citizen of Minnesota, resident of Shorewood, township, in County of Hennepin. Citizen/Petitioner is neither corporation nor other artificial entity or person. Bankruptcy Court had jurisdiction in this matter pursuant to 28 USC §§ 157(b)(2), 1334, and per 11 USC § 505, 502, Local Rule 103, and 26 CFR 601.109(d), under Article III U.S. Constitution Sec. 2, clause [1] judicial power to cases in law; and, under a Title 4 § 1., Flag of United States. Petitioner believes the Supreme Court of the United States of America has jurisdiction to review this case, from the final decision and Order of the United States Court of Appeals for the 8th Circuit, entered May 10, 1996, under 28 USC § 1254 (1); and, Article III, Sec. 1, and Sec. 2 clause [1] judicial power to cases in law, United States Constitution, and pursuant to due process as guaranteed under: Amend. I, petition for redress of grievances [1791]; Amend. V, [1791]; Amend. VI [1791]; and Amend.

XIV [1868]; United States Constitution.

Constitutional Provision and Statutes

United States Constitution. Article III. Sec. 1 and 2

United States Constitution. Amendment I [1791]

United States Constitution. Amendment V [1791]

United States Constitution. Amendment VI [1791]

United States Constitution. Amendment XIV [1868]

28 USC § 1254

26 USC § 6001

26 CFR § 1.6001-1

28 USC § 1746 (1)

Statement of Case

This case originated April 3, 1994 in by debtor's voluntary petition, in U.S. Bankruptcy Court, Fourth Division, Minnesota, the Honorable Judge Robert J. Kressel presiding. The United States INTERNAL REVENUE SERVICE, hereafter claimant or IRS, filed proof of claim alleging debtor's obligation for tax assessments over various years

between 1984 and 1994. Petitioner/debtor initiated proceedings July 21, 1994, under provisions of 11 USC § 505, § 502(B), 26 USC 601.109 (a) (3) (d), and under Bky Rule 3007, and a hearing on debtor's objection to IRS' proof of claim was scheduled for September 7, 1994. There was no dispute between parties as to fact debtor was unable to meet valid debt obligations without restructure under chapter 13 bankruptcy.

A confirmation hearing was held July 21, 1994. Assistant U.S. Attorney Michael Urbanos appeared on behalf of claimant/IRS and argued on motion to dismiss that debtor had not filed federal tax returns for 1991, 1992 and 1993. Mr. Urbanos argued further that debtor did not list claimant as secured creditor in amount of $26,000.00 as specified in the IRS' proof of claim. Attorney Gerald Hartke appeared on behalf of debtor. Mr. Hartke informed bankruptcy court that debtor had filed an objection to the IRS proof of claim, with a hearing date scheduled for September 7, 1994 at 11:00 a.m. Mr. Hartke suggested that the instant confirmation

hearing be continued until after that time. Mr. Hartke explained to Judge Kressel that issues could be sorted out there, and that the debtor may look at amending his chapter 13 plan at that time.

Judge Kressel inquired of Mr. Hartke, asking what about taxes [owed] for the years debtor hadn't filed tax returns?

Mr. Hartke briefly explained that debtor's objection was in essence to the IRS claim, for lack of *notice* pursuant to 26 USC § 6001, as fortified by court in the U.S. v. Mobil case [Appendix pg. A11, A10]. Mr. Hartke told the court that based on the results of the § 505 hearing, questions about the taxes could in fact be determined.

Judge Kressel asked Mr. Hartke if debtor filed tax returns for 1991, 1992, and 1993. Mr. Hartke answered no. Whereas Judge Kressel denied confirmation of debtor's plan until state and federal tax returns for 1991, 1992, and 1993 had been filed, then the Judge left the bench.

The court entered a written Order dated July 21, 1994, setting date by which debtor was to file

returns as Ordered or face dismissal of case (See Appendix, pg. A2). On August, 30, 1994, debtor filed tax returns for 1991, 1992 and 1993, under protest, and appropriate to status pursuant to 28 USC § 1746 (1).

A hearing on debtor's objection to IRS proof of claim was held September 7th 1994 pursuant to 11 USC § 505. Michigan attorney Mark Osterman appeared pro hoc vice on behalf of debtor. Mr. Osterman asked Judge Kressel to dismiss claimant's proof of claim because claimant did not support, as matter of law, the particular type and application of tax to be paid. The issue of notice pursuant to 26 USC § 6001 was also before the court.

Assistant United States attorney Michael Urbanos, appearing on behalf of claimant/IRS, argued that most courts realize taxpayers are citizens required to pay taxes imposed under the Internal Revenue Code. Mr. Urbanos went on to say that claimant considers such arguments tax protestor tactics. Mr. Osterman objected to claimant's tax protestor allegation and, based on

debtor's brief, asked the court to inquire as to what particular tax was owed, how that obligation arises as matter of law, and he asked claimant/IRS to justify that position. Notwithstanding Mr. Osterman's request, bankruptcy judge Kressel dismissed debtor's objection, allowed claimants claim No. 5 in the amounts then left the bench. From the bankruptcy court's decision and Order entered September 8th, 1994, allowing the IRS claim No. 5. [Appendix pg. A3], debtor/Petitioner timely filed on September 15, 1994, per Bky Rule P. 8001, a notice of appeal to U.S. District Court.

On appeal, with the Honorable Judge James M. Rosenbaum presiding, the district court's jurisdiction was pursuant to 28 USC § 158(a). On or about June 22, 1995, the district court entered an Order affirming the bankruptcy court decision without substantive explanation. (See Appendix pg. A5-A7). From the district court's decision and Order, debtor/petitioner timely filed notice of appeal on August 18, 1995, per 28 USC § 2107 and FRAP 4(a) (1), to 8th Cir. Court of Appeals, which

had jurisdiction under 28 USC § 158(d), 1331, and 1291. On May 10, 1996, the Honorable Circuit Judges: BEAM, LOKEN, and MORRIS SHEPPARD ARNOLD, issued the 8th Circuit Court's decision and Order, PER CURIAM, affirming lower courts' Orders (Appendix pg. A8-A9).

From the final decision of the 8th Cir. Ct. entered May 10, 1996, that debtor petitions this Honorable Supreme Court of the United States to review the record for err discussed herein by the bankruptcy court, as affirmed by the district court and 8th Cir. Ct. of Appeals.

Argument

On the record and before the bankruptcy court were the debtor's pleadings; motion, affidavit, and law memo rebutting presumptive validity of claimant's proof of claim, as to the following:

1). that, debtor, Kallevig, is jus sanguinis a private Citizen of Minnesota, one of the several united States of America; a resident of the town of Hopkins, in Hennepin County, being jurisdictionally "without the United States"; and,

2). that, debtor, Kallevig, had no income derived from sources "within the United States", as would be subject to the Internal Revenue Code and is not so indebted to the claimant; and,

3). that, debtor, Kallevig, has never been informed of any legal requirement, by notice served pursuant to 26 USC § 6001 as detailed in U.S. v. Mobil case, to make returns, render statements nor keep records relating to particular tax imposed under the IRC; and,

4). that, pursuant to notice under 26 USC § 6001, the Secretary has never required debtor, Kallevig, to provide information for purpose of assigning him identifying number, or taxpayer identification number.

5). that, debtor, Kallevig, never had proper standing nor capacity and in fact has never been required under the Social Security Act, pursuant to notice served or otherwise, to obtain a Social Security Account or Number.

6). that, the Social Security Account and Number card erroneously assigned to debtor, Kallevig, has been properly surrendered back to Social Security Administration/HHS due to mistakes of fact and law; and,

7). that, claimant/IRS filed fraudulent Notices of Federal Tax Lien against Citizen Kallevig, as there is no Court review nor Order of judgment against him, nor any Federal regulation (Title 26 CFR) authorizing filing of Federal Tax Lien; and,

8). that, no taxing statute and regulation appear on the face of Form 668(Y) Notice of Federal Tax Lien, or on the Notice of Levy, nor on the Proof of Claim to substantiate, as

a matter of law, the particular Kind of Tax assessed and being collected.

The IRS filed fraudulent Notices of Federal Tax Lien against Petitioner/Citizen Kallevig, having no judicial court review of the alleged debt and no Order of judgment entered against him, See: United States v. United States District Court, 407 U.S. 297, 313 - 318, 92 S.Ct. 2125, 2134 - 2137, 32 L.Ed.2d 752. Moreover there is no Federal regulation authorizing filing of Federal Tax Lien against Mr. Kallevig or his property. In filing a proof of claim, claimant's sovereign immunity was automatically waived pursuant to 11 USC § 106(a). Yet claimant/IRS refused debtor's request to evidence the taxing statute under the Internal Revenue Code, which gave rise to the judgment of the Secretary and notice served pursuant to 26 USC § 6001, thus requiring debtor pursuant to 26 USC § 6001, to file tax returns for years 1991, 1992, 1993 or any other years.

This Petitioner/debtor argued concisely in his brief and memorandum of law before the bankruptcy court, that Internal Revenue taxes are imposed by taxing statutes under the Internal Revenue Code,

giving rise to 26 USC § 6001 procedure and administration which states explicitly "that whenever in the judgment of the Secretary it is necessary, he may require any person by notice served or [and] by regulations, to make such returns, render such statements, or keep such records as the Secretary deems sufficient to show whether or not that person is liable for tax"... [See Append. A11, 26 USC § 6001].

It does not appear from the plain and explicit language of § 6001, as is supported by the court in U.S. v. Mobil [See Appendix pg. A10], that § 6001 authorizes the Secretary or IRS to exercise arbitrary authority to require returns, statements or records for assessing and collecting taxes from a Citizen.

The debtor presented the court with the law and facts which demonstrate that notice served, pursuant to 26 USC § 6001, initiates the procedure by which a subject matter and particular kind of tax, imposed by statute, is moved through the administrative process towards assessment and collection. Thus, logically, a taxing statute which

imposes a particular kind and subject matter of tax, is essential for the Secretary's judgment, because the taxing statute and not the Secretary's arbitrary will, gives rise to his requirement that a person make returns, render statements or keep records. To the same extent, the taxing statute and needful regulations are essential to initiate IRS procedure.

Notwithstanding the above argument, the bankruptcy court refused to make the requested inquiry as to particular tax owed and taxing statute which imposed that tax. The bankruptcy court decided arbitrarily to allow the IRS claim for taxes, and did not render findings of fact nor conclusions of law to support that decision [Appendix pg. A3].

Summary and Conclusion

The petitioner/debtor made his status as a private Citizen of Minnesota perfectly clear to the claimant and the court, which is in counter distinction to the internal juridsdiction of the United States Federal Government, INTERNAL REVENUE SERVICE. The fact that the

Petitioner/debtor is jurisdictionally without the United States (28 USC 1746 (1), has not been refuted by claimant. Without any legal basis supplied by the claimant or anywhere on the record, the bankruptcy court in its discretion found debtor liable for an unknown legally unsubstantiated income tax, and enforced a filing requirement on debtor by threatening to dismiss his case. Whether debtor was legally required to file tax returns was a contested issue to be proven in the § 505 hearing by the claimant/IRS, not the court.

By all appearances, the bankruptcy court used debtor's hearing on objection to IRS claim in a non judicial manner merely for the purpose of allowing the fullest possible amount of debt to favor the claimant, that appearance is supported by court's previous Order that debtor file tax returns before his objection to the IRS claim had been heard. Since the court did not ajudicate on the issues of fact or law presented by the debtor, the court did not render findings of fact and conclusions of law per F.R.Cv.P 52a to support allowance of the IRS claim.

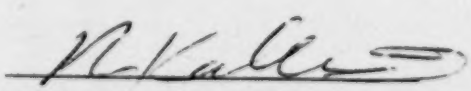
The failure of the bankruptcy court to uphold and apply the law in this case resulted in error injurious to the substantial rights of this Petitioner which can be summed up rhetorically by the succinct words of Lord Chatham in his defence of John Wilkes, January 9, 1770:

"Where law ends, tyranny begins"

* * * * *

Wherefor, Petitioner prays this Supreme Court of the United States of America will issue a Writ of Certiorari to the Court of Appeals for the 8th Circuit, and review the bankruptcy court record for the err and violation of debtor's substantial rights herein described;

Respectfully re-submitted as amended, on this 10th day of November, 1996,



Richard A. Kallevig,
Petitioner, Citizen in Party,
POA: 5825 Division Street
Shorewood, Minnesota, Postal Zone 55331

APPENDIX

Items numbered in order attached:

1. ORDER DENYING CONFIRMATION, entered July 21, 1994. (U.S. Bky Court).— [pg.—A.1, A.2]

2. ORDER ALLOWING CLAIM, entered September 8, 1994. (U.S. Bky Court).— [pg. A.3, A.4]

3. ORDER Of District Court, entered June 21, 1995.— [pg. A.5, A.6, A.7]

4. Order Of Eighth Cir. Ct Of Appeals, entered May 10, 1996.— [pg. A.8, A.9]

5. U.S. v. Mobil Oil Corp., reproduced in pertinent part.— [pg. A.10]

6. 26 USCS § 6001, reproduced in pertinent part, italics and underline added.— [pg. A.11]

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Richard Alan Kallevig,

Debtor.

ORDER DENYING CONFIRMATION

At Minneapolis, Minnesota, July 21, 1994.

This case came on for hearing of debtor's plan. The United States, on behalf of the Internal Revenue Service, filed an objection to confirmation and requested an order denying confirmation and for an order dismissing or converting this case. Michael A. Urbanos appeared on behalf of the United States on behalf of the Internal Revenue Service, Gerald Hartke appeared for the debtor, and Stephen J. Creasey appeared on behalf of the trustee.

For reasons stated orally and recorded in open court, IT IS ORDERED:

1. Confirmation of the debtor's plan is denied.

2. Unless the debtor properly files his 1991, 1992, and 1993 federal and state tax returns

by September 1, 1994, and files proof of such filing with the court, this case will be dismissed without further notice or hearing.

"s/_____"
ROBERT J. KRESSEL,
UNITED STATES BANKRUPTCY JUDGE

NOTICE OF ENTRY AND FILING ORDER OR JUDGEMENT

Filed and Docket Entry made on JUL 21 '94

Patrick G. De Wayne, Clerk, By "s/_____"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Richard Alan Kallevig,

Debtor.

ORDER ALLOWING CLAIM NO. 5
BKY 4-94-2231

At Minneapolis, Minnesota, September 8, 1994.

This case came on for hearing on the objection of the debtor to claim No 5 filed by the Internal Revenue Service. Mark Osterman appeared for the debtor and Michael A. Urbanos, Special Assistant United States Attorney, appeared on behalf of the United States of America, Internal Revenue Service.

For reasons stated orally and recorded in open court, IT IS ORDERED: The debtor's objection is overruled and claim No. 5 filed by the Internal Revenue Service is allowed as a secured claim in the amount of $26,667.14 and as a priority claim in the amount of $6,402.75.

"s/_____"
ROBERT J. KRESSEL,
UNITED STATES BANKRUPTCY JUDGE

NOTICE OF ENTRY AND FILING ORDER OR JUDGEMENT

Filed and Docket Entry made on SEP 08 '94

Patrick G. De Wayne. Clerk. By "s/_____"

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
4-94-CV-852
4-94-BKY-2231

In re: Richrd Alan Kallevig,

Debtor

Richard Alan Kallevig

Appellant,

v.

United States of America,
Internal Revenue Service.

Appellee.

This matter is before the court on appeal by appellant, Richard Alan Kallevig, of an Order, dated September 8, 1994, by the honorable Robert J. Kressel, United States Bankruptcy Judge. Judge Kressel overruled appellant's objection to a proof of claim for taxes filed by the Internal Revenue Service on June 24, 1994.

Appellant filed a timely appeal, pursuant to Rule 8001 of the Federal Rules of Bankruptcy Procedure.

A district court reviews a bankruptcy court's legal conclusions de novo. In re Leser, 939 F2d. 669, 671 (8th cir. 1991). However, a bankruptcy court's factual findings shall not be set aside unless clearly erroneous. In re Muncreif, 900 F2d. 1220, 1224 (8th cir. 1990).

Based on its review, the court finds no grounds to justify setting aside Judge Kressel's Order. The Court has reviewed theappellant's arguments and finds them top be trivial and patently frivolous. Therefore, the Court declines to address them individually.

Accordingly, based on the files, records, and proceedings herein, IT IS ORDERED that:

1. Judge Kressel's Order, dated September 8, 1994, is affirmed.

2. Appellees request for sanctions against appellant's counsel under Rule 11 of of the Federal Rules of Civil Procedure is denied

3. Appellee's request for oral argument is denied

Dated: June 21st, 1995

"s/_____"
JAMES M. ROSENBAUM,
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 95-3118

Richard Alan Kallevig	*	
	*	
Appellant,	*	
	*	Appeal from the United
v.	*	States District Court
	*	for the District of
United States of America,	*	Minnesota.
Internal Revenue Service.	*	
	*	(UNPUBLISHED)
Appellee.	*	

Submitted: May 7, 1996

Filed: May 10, 1996

Before BEAM, LOKEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Richard Kallevig appeals from the district court's affirmance of the bankruptcy court's allowance of a claim filed against his bankruptcy estate. Having carefully reviewed the record and the parties' briefs, we conclude the judgement of the district court was correct. Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

United States v. Mobil Oil Corp., ¶ 9242 at 83,506, 503 F.Supp. 507, 513 (12/18/81):

"The first codification of the Internal Revenue laws appeared in 1939... The exception was that the record and return provision required taxpayers to make returns and statements and keep records where the commissioner served notice on them, but it did not require them to perform these acts in the absence of notice by the commissioner... When it enacted § 6001 as part of the 1954 code, Congress eliminated the 1939 code's record and return provisions which related to specific types of tax liability and combined the requirement that taxpayers keep certain types of records and make returns and statements with the requirement that they perform these acts upon notice by the commissioner. Section 6001 was included in the 'Records, Statements and Special Returns' portion of the subtitle of the code concerning 'Procedure and Administration' which indicates congress did not intend for § 6001 to serve as an authorization to inspect records." (emphasis added).

26 USC § 6001 Notice or regulations requiring records, statements, and special returns:

"Every person *liable for* any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgement of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person ***is*** liable for tax under this title."...